

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5453 of 1990

with

SPECIAL CIVIL APPLICATION No 7708 of 1990

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

HARSHVADAN D JOSHI

Versus

MANAGING DIRECTOR-VIVEK EDU TRUST

Appearance:

MR HV PUJARA for Petitioner
Mr.D.C.Raval for Anand Advocates for Resp.No.1 & 2.
Mr.A.D.Oza, G.P. instructed by Mr.R.M.Desai,
Solicitor for the respondent no.3.

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI

Date of decision: 11/08/2000

ORAL JUDGEMENT

The order in this petition shall also decide the connected Special Civil Application No. 7708 of 1990 which has been preferred against the said order dated 6.7.1990 passed by the Gujarat Secondary Education Tribunal.

2. The brief facts necessary for deciding these 2 cross petitions are as under:-

3. The petitioner was serving on the post of Principal in Sardar Patel and Swami Vivekanand High School, Maninagar, Ahmedabad under the management of Shri Vivek Education Trust (respondent no.2 & 1 herein). A disciplinary action was taken against him under successive chargesheets and he was suspended during inquiry. After completion of the inquiry, punishment of dismissal from service was imposed on him. Aggrieved by the order of dismissal, the petitioner approached the Gujarat Secondary Education Tribunal for seeking relief of setting aside of the inquiry and his reinstatement in service as Principal.

4. The Gujarat Education Tribunal in its impugned order dated 6.7.1990 examined the record of the inquiry held against the petitioner and came to the conclusion that he was victimised on trivial charges. It is also observed that he has been maligned and the action of the authorities was malacious. Despite the above findings, it was held that some of the charges were partly proved. The extreme penalty imposed of dismissal from service has however been held to be disproportionate for the minor changes found to have been proved. The Tribunal therefore set aside the punishment of dismissal and instead imposed punishment of reversion or demotion of the petitioner from the post of Head Master to the post of Asstt. Teacher.

5. The relevant part of the findings and the reasons assigned for interfering with the quantum of punishment are contained in para 30 of the impugned orders of the Tribunal and deserves to be quoted:-

"30. Though the above mentioned charges are proved in the facts and circumstances of the case, I feel that extreme penalty of dismissal would be inappropriate. The applicant headmaster has a long career of about 29 years. as a headmaster and dismissal would not only remove him from service from the opponent school but

would entail depriving him of the pensionary benefits. No doubt the charges which are held by me to have been proved are serious but they are not so serious as to merit extreme penalty of dismissal. Furthermore, there appears to be an attitude of victimisation on the part of the school management which is apparent by heaping so many unsustainable and trifling charges. I need not go into the reasons why the school management is out to malign the applicant but looking to the nature of several of the charges it appears that there is a motive hunting by a motiveless malignity. Be that as it may, but when some serious charges have been proved the management would be justified in inflicting some penalty. Most of the charges which are proved relate to efficiency and propriety of the applicant to work as a headmaster. Therefore, if the headmaster is demoted to the post of asstt. teacher then he would not be in a position to again indulge into some misconduct. Therefore, instead of penalty of dismissal, the applicant can be demoted from the post of headmaster to that of an asstt. teacher. That would meet the ends of justice."

6. Aggrieved by the order of the Tribunal, the petitioner as well as the Management has approached this Court by way of these two Special Civil Applications.

7. On a prayer for grant of interim relief, this Court came to the conclusion that prima facie the order of the Tribunal is not in accordance with law as the Tribunal could not have imposed punishment of reversion of the petitioner when he was directly recruited to the post of Headmaster. Reference have been made to the 2 decisions of the Supreme Court in the case of Nyadar Singh Vs. Union of India reported in AIR 1988 SC 1979 and in the case of Hussain Sasan Saheb Kaladgi Vs. State of Maharashtra reported in (1988) 4 Supreme Court Cases 168.

8. This Court therefore by order passed on 19.9.90 granted interim relief to the petitioner directing that pending hearing and final disposal of the petition, the respondent Institution shall pay to the petitioner salary as Principal which he was getting before the impugned

order of dismissal was passed against him on 4.7.1988.

9. Ld. Counsel appearing for the petitioner and the School Management informed that pursuant to the order granting interim relief, the petitioner, throughout continued on the salary of Principal. It is reported that after completing his service period on salary of Principal, he has now retired at superannuation age on 31.5.91.

10. Learned Counsel appearing for the petitioner contends that the Tribunal having recorded a finding that most of the charges levelled were not proved and many of them were trivial being outcome of malice to victimise the petitioner, instead of substituting the punishment of demotion for dismissal it should have quashed the entire inquiry to grant full relief to the petitioner.

11. I have also heard Ld. Counsel appearing for the Management. It is not denied that the petitioner on the basis of the interim relief granted herein, was paid salary of Principal during the entire period of his service. It is also not disputed that he has retired on salary of Principal. Some attempt was made on behalf of the Management to assail the order of the Tribunal and to seek an order of remand. As has been rightly held by the Tribunal, the petitioner having been directly recruited to the post of Principal, punishment of reversion or demotion could not have been imposed upon him. After setting aside the punishment imposed the matter now cannot be remanded to the Tribunal because during pendency of this petition, the petitioner has retired on attaining the age of superannuation.

12. There is great force in the submission made on behalf of the petitioner - employee that on the findings reached by the Tribunal that the charges were trivial and disciplinary action was malicious, it ought to have set aside the whole inquiry.

13. Consequent to the aforesaid discussions, Special Civil Application No. 5453 of 1990 preferred by the petitioner - employee succeeds and is hereby allowed. The impugned order of the Tribunal dated 6.7.1990 (Annexure O) as also the impugned order of dismissal of the petitioner from service passed by the Management dated 4.7.1988 (Annexure M) are hereby quashed. The connected petition SCA No. 7708 of 1990 filed by the Management is hereby dismissed. As a consequence of the setting aside of the order of dismissal and the order of the Tribunal, it is directed that the petitioner's

pension and terminal benefits now be paid to him on the basis that he has retired from service on the post of Principal. Let the necessary payment of his pension and terminal benefits be made to the petitioner within a reasonable period of 4 months. Rule made absolute. No order as to costs.

(D.M.Dharmadhikari, CJ)

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